

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Modification of the Application) Docket No.
for Certification for the) 01-AFC-7C
Russell City Energy Center)
_____)

CONFERENCE ROOM 2A
HAYWARD CITY HALL
777 B STREET
HAYWARD, CALIFORNIA 94541

THURSDAY, JULY 19, 2007

4:32 p.m.

Reported by:
Peter Petty
Contract No. 170-07-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

Jeffrey D. Byron, Associate Member

HEARING OFFICER AND ADVISORS

Paul Kramer, Hearing Officer

Gabriel Taylor, Advisor

Raoul A. Renaud, Hearing Office

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

Lance Shaw, Project Manager

James S. Adams

Eric Knight

Matthew Layton

Shaelyn Strattan

Alvin Greenberg

William Walters
Aspen Environmental Group

PUBLIC ADVISER

Michael Monasmith

INTERPRETER

Priscilla Figueroa

APPLICANT

Greggory Wheatland, Attorney
Ellison, Schneider and Harris

Mike Argentine, Project Manager
Calpine Corporation

Gregory S. Darwin
Atmospheric Dynamics

Douglas M. Davy
CH2M HILL

Marshall W. Graves, Jr.
International Institute for Aviation, Science
and Technology

Christine Killip
Katestone Environmental

INTERVENOR

Paul N. Haavik, Property Manager
Checkaboard Square Rentals, Inc.

David Stark

Carol Ford

ALSO PRESENT

Jesus Armas, City Manager
City of Hayward

Bob Nishimura
Bay Area Air Quality Management District

Cindy Horvatch
Airport Land Use Commission

Audrey LePell

Robert McDonald

Joanne Gross

ALSO PRESENT

Wafaa Avorashed

Dennis DuBose

Jason Moreno

Barbara Vierra

Connie Liranzo-Jordan

Robert Strauss

Juanita McDonald

Andrew Wilson

Joanne Gardiner

Michael Toth

J.V. McCarthy

Charlie Cameron

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P R O C E E D I N G S

4:32 p.m.

PRESIDING MEMBER GEESMAN: This is a meeting of the California Energy Commission Siting Committee. It's the prehearing conference on the application by the project owner of the Russell City Energy Center for an amendment to its existing license.

I'm John Geesman, the Presiding Member of the Committee. To the far right is Commissioner Jeff Byron, the Associate Member of the Committee.

I'm going to turn this over to Paul Kramer, our Hearing Officer, to conduct the prehearing conference. Paul.

HEARING OFFICER KRAMER: Thank you, Commissioner Geesman. The other people up here on the dais, to Commissioner Geesman's left is Raoul Renaud; he is one of my counterparts in the Hearing Office. And he's new to our office so he's here to help out and to observe, and if you will, learn on the job.

And then Gabe Taylor, Commissioner Byron's Advisor, just sitting right up here on the dais.

1 So to introduce the other people I'll
2 let the parties introduce themselves. Let's start
3 with the far right, Mr. Ratliff.

4 MR. RATLIFF: I'm Dick Ratliff, Counsel
5 for the staff. And with me today is also Lance
6 Shaw, the Project Manager for the Commission
7 Staff.

8 MR. WHEATLAND: Good afternoon. I'm
9 Gregg Wheatland; I'm Counsel for the applicant.
10 And with me here is Mike Argentine, who is our
11 Project Manager.

12 MR. HAAVIK: Paul Haavik, Intervenor.

13 HEARING OFFICER KRAMER: Thank you. Mr.
14 Monasmith, do you want to step in? Mr. Monasmith
15 is here from the Public Adviser's Office. And his
16 role in this proceeding is to help members of the
17 public understand the process and how they can
18 participate in it.

19 So, if you have any questions, please
20 see him. He'll be either in the back of the room
21 or outside at the table with all the materials on
22 it. And do we still have agendas out there, Mike?

23 MR. MONASMITH: Yes.

24 HEARING OFFICER KRAMER: Among the
25 things out there is a copy of the agenda for

1 today's hearing. It may change a little bit as we
2 go through the discussion and the prehearing
3 conference, but if you want to try to see what's
4 coming up next, feel free to take a copy of that.

5 We also have for anyone here who would
6 like to have a Spanish translation of the
7 proceedings, we have Priscilla Figueroa. Could
8 you raise your hand? She's in the back there.
9 And if you would like to have this translated into
10 Spanish for you, please see her.

11 I believe that takes care of the
12 introductions. So, the public hearing on the
13 amendment for the power plant project will be at
14 6:00 p.m. this evening. The purpose of this
15 prehearing conference is to go over any last-
16 minute details among the parties, to make sure
17 we're ready to hear all or some of the issues in
18 that amendment proceeding. And to deal with some
19 last-minute housekeeping items.

20 So the first order of business in that
21 discussion is to identify any issues that remain
22 unresolved between the parties.

23 Later this evening when we start the
24 hearing, the current plan, subject to amendment
25 after this discussion, is to take most of the

1 issues as one group of issues. And then to allow
2 public comment after that.

3 I did notice, however, in reviewing
4 several of the topic areas that there may be some
5 unresolved proposals to change conditions either
6 by the applicant or by the staff. And I wanted to
7 highlight those and ask the parties to be ready to
8 report on those, and also tell me if there are any
9 others that I missed at the start of tonight's
10 hearing.

11 The first area was biological resources.
12 I believe there was at least one proposal from the
13 applicant that the staff didn't respond to. It
14 may be that by not responding they meant to say
15 that they did agree with it. But I'm just not
16 sure, and we need to resolve that for the record.

17 Similarly, it was the situation in soil
18 and water resources. And waste management. And
19 transmission system engineering.

20 So because some of that may involve
21 testimony, I think we probably should talk about
22 it this evening when the hearing opens and we're
23 creating the record for the case. Unless either
24 party thinks we can resolve some of those now
25 without any testimony.

1 MR. RATLIFF: It's our understanding
2 that those issues are all resolved to the
3 satisfaction of the other parties.

4 HEARING OFFICER KRAMER: Mr. Wheatland,
5 would you agree that you have no --

6 MR. WHEATLAND: Yes, that's our
7 understanding, as well.

8 HEARING OFFICER KRAMER: Okay, so to the
9 extent that you propose something and the staff
10 didn't carry it out in their errata, you're
11 comfortable with the errata the way it is?

12 MR. WHEATLAND: We understand that the
13 staff has some additions to the errata that were
14 inadvertently omitted from the errata, that they
15 will be proposing to add this evening.

16 And with those additions we are
17 satisfied with the staff's recommendations in
18 those areas. Did I say that correctly?

19 MR. RATLIFF: I think that's correct.

20 MR. SHAW: I'm okay on -- I don't have
21 any that have changed on TSE, soil, water, bio.

22 MR. RATLIFF: Which portions of the
23 errata, though, are missing that need to be added
24 to the errata? Which portions?

25 MR. SHAW: I don't know of any on those

1 items he mentioned.

2 MR. ARGENTINE: I believe it was soil
3 and water resources and hazardous materials.

4 MR. WHEATLAND: And there are no
5 additions to transmission system engineering, I
6 believe. There are no additions to biological
7 resources.

8 HEARING OFFICER KRAMER: Okay, well, I
9 know in the case of transmission system
10 engineering you proposed quite a few changes along
11 the same theme of just covering the line on the
12 property, itself. And the staff apparently didn't
13 want to make those changes. So, are you okay with
14 that?

15 MR. WHEATLAND: Right, and it's my
16 understanding that the reason that the staff did
17 not want to make those changes is that PG&E has
18 not yet affirmatively indicated that it will, in
19 fact, be the entity that will construct, own and
20 operate the gen tie-in. So we will be endeavoring
21 to get a written commitment from PG&E to that
22 effect. And we believe that with that letter from
23 PG&E it will help to resolve that issue.

24 HEARING OFFICER KRAMER: Is that
25 something you're planning on getting in the near

1 future, or subsequent to a decision on this
2 amendment?

3 MR. WHEATLAND: Prior to a decision on
4 this amendment.

5 MR. RATLIFF: Yes, that's correct. I
6 mean the staff's experience in some cases has been
7 that there's been an intended transmission
8 operator, but it changed after we licensed the
9 applicant's -- after we granted the license.

10 And then this left us without a
11 condition that was applicable to the builder of
12 the transmission line. Which this created
13 complications in the past.

14 So, now we want those conditions that we
15 put in transmission system engineering and
16 transmission line safety and nuisance to be
17 applicable to the applicant and to any contractor
18 or the applicant until it is definite as to whom
19 is building the transmission line.

20 So, if, for instance, in the area of
21 transmission system engineering, PG&E were to
22 definitively provide us with a letter that they
23 are going to be the owner and the operator of the
24 transmission line, then we could probably change
25 the conditions that we currently have that were

1 objectionable to the applicant.

2 HEARING OFFICER KRAMER: I recall in a
3 prior case there was a condition something to the
4 effect that if a regulated utility ends up
5 building and operating the line, then the
6 conditions were inapplicable. So it was a formula
7 that, in effect, self-execute. Have you
8 considered something along those lines?

9 MR. RATLIFF: We could consider such a
10 thing. What we have suggested in its place is
11 that if PG&E is to be the owner and operator, that
12 they indicate that to us now. And then we would
13 be satisfied to drop those conditions, or to
14 change them to make it the applicant, in the way
15 that the applicant has suggested.

16 HEARING OFFICER KRAMER: But then if
17 things changed again and PG&E were out of the
18 picture, wouldn't you be in the position that you
19 fear that you don't have a condition?

20 MR. RATLIFF: Yes, we would,
21 unfortunately. Which I suppose is the argument
22 for not changing it at all and just forcing the
23 applicant to live with it.

24 HEARING OFFICER KRAMER: Or I think that
25 would be addressed by the condition I was -- type

1 I was remembering. But it sounds like we'll need
2 to leave the record open for some further evidence
3 and proposals on that particular issue, perhaps.
4 Is that fair to say?

5 MR. RATLIFF: Yes, yes.

6 HEARING OFFICER KRAMER: Okay, I assume
7 the parties have had a chance to review the agenda
8 and the proposed order of topics. Did you have
9 any requests to modify the order in any particular
10 way?

11 MR. WHEATLAND: We have no request to
12 modify the order.

13 MR. RATLIFF: No.

14 MR. HAAVIK: Paul, could you possibly
15 explain why the air quality, public health,
16 hazardous materials and land use, traffic and
17 transportation are at the end rather than at the
18 beginning?

19 HEARING OFFICER KRAMER: Well, normally
20 they're issues where we either want to have
21 testimony for the benefit of the public, or
22 because the parties have a dispute.

23 And traditionally then we try to
24 eliminate all the areas which don't fall under
25 that category. We could reverse the order, but

1 then we may find ourselves, after we go through
2 the exercise above, having an additional category.

3 So, it's just logical, at least in my
4 mind, that you identify all those that don't need
5 any special treatment, if you will; and then those
6 that remain you go through, and then you're done.

7 But I'm guessing that you're thinking
8 the public would be benefitted by not sitting
9 through that discussion?

10 MR. HAAVIK: That's where I was going
11 with it.

12 HEARING OFFICER KRAMER: I guess my
13 answer would be it's going to be very short.

14 MR. HAAVIK: That was going to be my
15 next question, so, thank you.

16 HEARING OFFICER KRAMER: Okay, so other
17 housekeeping matters. Do we have any additional
18 exhibits that we need to number? I circulated to
19 the parties yesterday an exhibit list. Are there
20 any documents that the parties are intending to
21 introduce beyond those that are already listed?

22 MR. WHEATLAND: We have one additional
23 exhibit that we'd like to have marked for
24 identification. The staff, in its errata that was
25 released yesterday, included an additional section

1 on cumulative impacts regarding thermal plumes and
2 aviation.

3 And we have some additional testimony on
4 response to that portion of the errata. And I
5 have provided the staff and intervenor with
6 copies. I have copies for the Committee and the
7 public.

8 HEARING OFFICER KRAMER: Okay. If I'm
9 correct your next number is 31? Does that sound
10 correct?

11 MR. WHEATLAND: Yes.

12 HEARING OFFICER KRAMER: Okay, we'll
13 mention it again tonight and get the full title
14 for the record.

15 Any other exhibits from Mr. Haavik or
16 the staff?

17 MR. HAAVIK: No.

18 MR. RATLIFF: No, I don't believe we
19 have anything else to add.

20 HEARING OFFICER KRAMER: Mr. Wheatland,
21 Commissioner Byron is wondering whose testimony
22 this is. Is this just submitted by Russell City
23 Energy Center?

24 MR. WHEATLAND: Yeah, this is submitted
25 by Russell City Energy Center. And this will be

1 sponsored by two of our witnesses who are
2 currently scheduled to testify on thermal plumes
3 and aviation, Mr. Davy and Mr. Graves.

4 HEARING OFFICER KRAMER: Okay, help me
5 remember to reflect that in the record tonight,
6 then.

7 MR. WHEATLAND: Yes.

8 MR. RATLIFF: And, Mr. Kramer, with
9 regard to your proposed schedule I notice you have
10 listed some areas that have changed, air quality,
11 public health, hazardous materials and land use.
12 I think we have to add to that fire safety,
13 because we have some errata changes there, as
14 well, that should be on that list, I think. And
15 those can be discussed by Mr. Greenberg whenever
16 the time comes -- Dr. Greenberg.

17 HEARING OFFICER KRAMER: Would it make
18 sense that that be a separate topic, or combined
19 with hazardous or public health.

20 MR. RATLIFF: I don't know how you
21 intend to do it, but it could be either way, so
22 long as Dr. Greenberg gets an opportunity to
23 briefly address it.

24 HEARING OFFICER KRAMER: Actually that
25 would have been within worker safety and fire

1 protection.

2 MR. RATLIFF: That's right.

3 HEARING OFFICER KRAMER: Okay, so we'll
4 just move that topic down with the other five.

5 MR. HAAVIK: And which order would that
6 be, then?

7 HEARING OFFICER KRAMER: How about after
8 hazardous materials.

9 Okay, well, any other housekeeping or
10 other business from the parties before we take our
11 dinner break?

12 MR. WHEATLAND: Will we be discussing
13 the briefing schedule and the schedule for issuing
14 the PMPD at the conclusion of the evidentiary
15 hearings or would it be better to discuss that
16 now?

17 HEARING OFFICER KRAMER: Well, certainly
18 I'm not sure we'll know whether we require briefs
19 until after the hearing. The contents of the
20 hearing may affect the other schedule, as well.
21 So I suppose we should wait.

22 MR. WHEATLAND: Thank --

23 HEARING OFFICER KRAMER: I can tell you
24 that I have identified some, if we do need to go
25 over for some reason, we do have a couple dates in

1 about two weeks that would work for the Committee.
2 So we are available to -- if it's getting
3 additional evidence, or for whatever purpose.

4 PRESIDING MEMBER GEESMAN: Do we have
5 any time constraints tonight? Are we restricted
6 in this room?

7 HEARING OFFICER KRAMER: I think we have
8 it for the evening.

9 PRESIDING MEMBER GEESMAN: The evening
10 is whenever we say it's over?

11 HEARING OFFICER KRAMER: I'll check
12 during the break, but I --

13 PRESIDING MEMBER GEESMAN: It would be
14 my intent to continue till we're done.

15 ASSOCIATE MEMBER BYRON: Mine, as well.

16 HEARING OFFICER KRAMER: But, if there's
17 something open that we can't resolve then we're
18 ready, as soon as we can, to resume. And, of
19 course, that wouldn't affect the progress of the
20 decision that much because much of it could be
21 worked on while an issue or two is open anyway.

22 Any other housekeeping matters?

23 Okay, --

24 MR. HAAVIK: Paul, I have a procedural
25 question. If there's a necessity to add any

1 statements or anything that comes from this
2 hearing this evening, that possibly the public
3 would want to address in writing, who would they
4 address that to? To yourself, or to the staff?

5 HEARING OFFICER KRAMER: Either one
6 would work really. See that it's docketed. Once
7 the hearing's closed, however, the evidentiary
8 record will close. And additional evidence would
9 not be received. Public comments always to into
10 the docket, but the time to make themselves heard
11 is this evening.

12 MR. HAAVIK: Thank you.

13 MR. RATLIFF: We would ask that you
14 leave the record open for the topics of traffic
15 and transportation and land use for the receipt of
16 any agency comments from the agencies that have
17 been requested to comment.

18 HEARING OFFICER KRAMER: How do the
19 other parties feel about that?

20 MR. WHEATLAND: Well, as long as leaving
21 it open would not interfere with the issuances of
22 the PMPD, we would have no objection. But there
23 does reach a point in time where the record must
24 close. And so we believe that the Committee
25 should pick a date for closure of the record that

1 would not impair the issuance of the proposed
2 decision.

3 MR. HAAVIK: I would agree with the same
4 because we brought that up during a conference
5 call, as you may recall, Paul; and I was concerned
6 about those letters not being -- or arriving in
7 time for this hearing.

8 PRESIDING MEMBER GEESMAN: What agency
9 comments are we talking about?

10 MR. RATLIFF: Well, the staff has a list
11 of comments from several agencies, among them
12 Caltrans and FAA. I think each of those have
13 responded.

14 I think, I'm not certain which other
15 agencies, I think there were seven agencies all
16 together, whose comments were solicited.

17 Other than the Caltrans and FAA letters,
18 I'm not sure there's been a response from any of
19 the others.

20 PRESIDING MEMBER GEESMAN: You're not
21 expecting anything further from FAA or Caltrans?

22 MR. RATLIFF: Well, of course we would
23 hope that we would get something further, but I
24 guess I'm not sure we'd be expecting to get
25 something further. But it certainly is possible.

1 HEARING OFFICER KRAMER: Did you intend
2 to mark those documents as exhibits? I recall the
3 Caltrans letter came in yesterday or the day
4 before.

5 MR. RATLIFF: That's correct. Yes, we
6 would.

7 HEARING OFFICER KRAMER: I'm not sure I
8 have a copy -- I'm not sure I've seen the FAA
9 letter. But I have seen the Caltrans letter.

10 So, when the hearing starts we should
11 address that as a housekeeping matter.

12 MR. RATLIFF: Yes, okay. We'll get
13 copies.

14 HEARING OFFICER KRAMER: Anything
15 further from the parties?

16 Okay, well, we will take the dinner
17 break that's on the agenda and resume at 6:00 p.m.
18 for the public evidentiary hearing.

19 (Whereupon, at 4:54 p.m., the prehearing
20 conference was concluded.)

21 --o0o--

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Prehearing Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of July, 2007.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345